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10/783,640	02/20/2004	Raymond P. Silkaitis	7135USO3	7339
41155 7590 12/30/2010 BRIAN R. WOODWORTH 275 N. FIELD DRIVE DEPT. NLEG BLDG H-1 LAKE FOREST, IL 60045-2579				
EXAMINER SOREY, ROBERT A				
ART UNIT		PAPER NUMBER		
3626				
NOTIFICATION DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/783,640

**Applicant(s)**

SILKAITIS ET AL.

**Examiner**

ROBERT SOREY

**Art Unit**

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-942)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 12/10/2010
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/09/2010 has been entered.

### ***Status of Claims***

2. In the amendment filed 09/09/2010, the following occurred: claim 14 was amended. Claims 14-23 are presented for examination.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claim 14** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant claims displaying a web browser "page" but no support could be found for a web browser "page" in the specification. The only area of the specification that substantially addresses the web server/browser aspect of

the invention is the first paragraph on page 42 (lines 5-16), and all that is mentioned is a web browser screen portion - no mention of a web browser page; hence, the web browser "page" is considered new matter.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claim 14** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. As per claim 14, Applicant claims "a web browser page" but it is unclear as to what is meant by web browser "page" and the specification is silent on the subject of a web browser page. What is a "web browser page"? For the purposes of examination, it is understood that a web browser page is an Internet icon.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 14-19 and 21-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over 2002/0038392 to De La Huerga in view of U.S. Patent 7,154,397 to Zerhusen.
10. As per claim 14, De La Huerga teaches a system for administering medication to a patient comprising:

--*an infusion pump comprising: a pump housing* (Fig. 17 and 26)(see: De La Huerga, paragraph 145, is met by pump includes a housing),

--*a processor that acts as a web server disposed in the pump housing* (Fig. 17 and 26)(see: De La Huerga, paragraph 145, is met by controller portion of the pump including a processor and accessible memory; and paragraph 149, is met by processor also linked to a communication channel such as an intranet or the Internet for communication with other facility or remote computing and storage devices),

--*a unitary display located on the pump housing and in communication with the processor*, (Fig. 17 and 26)(see: De La Huerga, paragraph 145, 148, and 149, is met by display linked to the processor),

--wherein the display comprises a first portion and, wherein the first portion is configured to display a pump information page (Fig. 17 and Fig. 18)(see: De La Huerga, paragraph 173, is met by parameter settings displayed on pump screen; paragraph 152, is met by flow rate, duration, dose, and volume; and paragraph 164, is met by information being displayed on screen so that physician can visually confirm basic information (e.g., patient name, general physical characteristics)).

De La Huerga teaches a display with touch screen keys on a computer linked and associated with the pump (see: De La Huerga, paragraph 163), but does not specifically teach that the pump display is a *dual function touch screen*.

Additionally, De La Huerga teaches a processor in a intravenous pump linked to a communication channel such as an intranet or the Internet for communication with other facility or remote computing and storage devices (see: De La Huerga, paragraph

145 and 149), but does not specifically teach *a second portion, and wherein the second portion is configured to concurrently display a web browser page.*

However, Zerhusen teaches a touch screen (see: Zerhusen, column 5, lines 54-67; and column 13, lines 42-59) with two portions displayed simultaneously (Fig. 43, first portion is met by ele. 630 and concurrently shown second portion is met by ele. 632)(see: Zerhusen, column 14, lines 3-12) and a second of which is configured to display an Internet icon that actuates a customized home page or other Internet connection (Fig. 43, ele. 658)(see: Zerhusen, column 14, lines 3-12; column 16, lines 40-47; column 34, lines 4-32; and column 35, lines 5-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of De La Huerga and Zerhusen. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Additionally, though it is not relied upon for the purposes of rejection because the prior art of De La Huerga and Zerhusen, as combined in this obviousness-type rejection, meet all of the claimed limitations, it is also noted that the arrangement of the data on the display is a matter of obviousness design choice in this particular instance. The arrangement of specific elements in the prior art need not be exactly the same as those presented in the claims. Section 2144.04 of the MPEP presents case law that sets legal precedent for supporting the rationale to reject based on design choice.

11. As per claim 15, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teaches:

*--wherein the pump information comprises a digital photo of a patient the infusion pump is currently associated with (Fig. 49)(see: Zerhusen, column 14, line 56 through column 15, line 3, is met by computer generating a screen that includes the patient's name, time, scheduled medication to give, schedule does to give, and methods of administration, an image or photo of the patient illustratively displayed to confirm that the patient is the correct patient).*

12. As per claim 16, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teach:

*--wherein the pump information comprises pump monitor information (Fig. 17 and Fig. 18)(see: De La Huerga, paragraph 173, is met by parameter settings displayed on pump screen; paragraph 152, is met by flow rate, duration, dose, and volume; and paragraph 164, is met by information being displayed on screen so that physician can visually confirm basic information (e.g., patient name, general physical characteristics).*

13. As per claim 17, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 16, and further teach:

*--wherein the pump monitor information includes infusion pump operating parameters selected from a group of infusion pump operating parameters consisting of dose, rate, duration and volume (Fig. 17 and Fig. 18)(see: De La Huerga, paragraph 173, is met by parameter settings displayed on pump screen; and paragraph 152, is met by flow rate, duration, dose, and volume).*

14. As per claim 18, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teach:

*--wherein the processor is in communication with a web browser client device that is remote from the pump (Fig. 17 and 26)(see: De La Huerga, paragraph 145, is met by controller portion of the pump including a processor and accessible memory; and 149, is met by processor also linked to a communication channel such as an intranet or the Internet for communication with other facility or remote computing and storage devices).*

15. As per claim 19, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 18, and further teach:

*--wherein the processor supplies the web browser client device with web browser information (Fig. 43, ele. 658)(see: Zerhusen, column 14, lines 3-12; column 16, lines 40-47; column 34, lines 4-32; and column 35, lines 5-20, is met by an Internet icon and a customized home page or other Internet connection being made, and a browser for interfacing with server and the Internet, software configured to provide internet access to websites).*

16. As per claim 21, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 18, and further teach:

*--wherein the processor supplies the web browser client device with pump information (see: Zerhusen, column 1, lines 25-43, is met by computer receiving automatically information from various monitors including IV pumps; column 6, lines 1-7, is met by treatment device connected to the computer; and column 36, line 25 through*



column 37, line 4, is met by patient record retrieval and input, patient physiological monitoring, and medication management).

17. As per claim 22, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teach:

*--a medication management unit in electronic communication with the infusion pump and having a processing unit and a storage medium coupled to the processing unit, the storage medium containing programming code executed by the processing unit to (Fig. 17 and 26)(see: De La Huerga, paragraph 145, is met by controller portion of the pump including a processor and accessible memory; and 149, is met by processor also linked to a communication channel such as an intranet or the Internet for communication with other facility or remote computing and storage devices):*

*-store infusion pump operating parameters specific to a patient (Fig. 17 and Fig. 18)(see: De La Huerga, paragraph 152, is met by flow rate, duration, dose, and volume); and a digital photo of the patient in the storage medium (Fig. 49)(see: Zerhusen, column 14, line 56 through column 15, line 3, is met by computer generating a screen that includes the patient's name, time, scheduled medication to give, schedule does to give, and methods of administration, an image or photo of the patient illustratively displayed to confirm that the patient is the correct patient);*

As per the limitations:

*-transmit the infusion pump operating parameters specific to a patient and the digital photo of the patient from the medication management unit to the infusion pump; and*

*--wherein the processor of the infusion pump receives the infusion pump operating parameters specific to a patient and the digital photo of the patient from the medication management unit and displays the infusion pump operating parameters specific to a patient and the digital photo of the patient as pump information.*

They are taught by the combination of De La Huerga and Zerhusen. De La Huerga teaches parameter settings displayed on pump screen including flow rate, duration, dose, and volume and information being displayed on screen so that physicians can visually confirm basic information (e.g., patient name, general physical characteristics)(Fig. 17 and Fig. 18)(see: De La Huerga, paragraph 173; paragraph 152; and paragraph 164). Zerhusen teaches a computer generating a screen that includes the patient's name, time, scheduled medication to give, schedule does to give, and methods of administration, an image or photo of the patient illustratively displayed to confirm that the patient is the correct patient (Fig. 49)(see: Zerhusen, column 14, line 56 through column 15, line 3).

18. As per claim 23, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 15, and further teach:

*--wherein the digital photo of a patient the infusion pump is currently associated with is transmitted directly to the infusion pump by a patient identification indicator device located on the patient* (see: Zerhusen, column 14, line 56 through column 15,

line 3, is met by scanning patient wristband to receive patient identification and based thereon generates the patient information, including image or photo of the patient, for confirmation by the caregiver).

19. **Claim 20** is rejected under 35 U.S.C. 103(a) as being unpatentable over 2002/0038392 to De La Huerga in view of U.S. Patent 7,154,397 to Zerhusen further in view of U.S. Patent 6,208,974 to Campbell.

20. As per claim 20, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 19, and as per the limitation:

*--wherein the web browser information includes a caregiver task list.*

De La Huerga teaches a communication channel such as an intranet or the Internet for communication with other facility or remote computing and storage devices (Fig. 17 and 26)(see: De La Huerga, paragraph 145; and 149) and Zerhusen teaches a customized home page or other Internet connection being made (Fig. 43, ele. 658)(see: Zerhusen, column 14, lines 3-12; column 16, lines 40-47; column 34, lines 4-32; and column 35, lines 5-20), but neither specifically teach information including *a caregiver task list*; however, Campbell teaches network access of by doctors and nurses of to-do lists (Fig. 11 and Fig. 12)(see: column 5, line 35 through column 6, line 27; column 19, lines 24-43; and column 25, lines 3-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of De La Huerga, Zerhusen, and Campbell. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the

same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

***Response to Arguments***

21. Applicant's arguments from the response filed on 09/09/2010 have been fully considered and will be addressed below in the order in which they appeared.

22. In the remarks, Applicant argues in substance that (1) "Zerhusen merely discloses a touch screen capable of displaying multiple icons at one time, one of which can be used to establish an Internet connection. Zerhusen at col. 14, lines 3-12, col. 16, lines 40-47. Zerhusen states, "By activating one of the icons, menus are called up and displayed on the touch screen." Zerhusen at col. 13, lines 50-53. Zerhusen also teaches, "When Internet icon 658 is touched, a customized home page or other Internet connection is made." Zerhusen at col. 16, lines 40-41. Conversely, amended claim 14 requires "the dual function touch screen display" to comprise "a first portion and a second portion, wherein the first portion is configured to display a pump information page and wherein the second portion is configured to concurrently display a web browser page.""

The Examiner respectfully disagrees. Applicant's argument (1) is not persuasive.

An explanation of the rejection: De La Huerga teaches a display with "first portions" as cited in Figures 17 and 18 and paragraphs 152, 164, and 173. The term "portion" is broadly interpreted and is met by the pump information areas displayed. De La Huerga also teaches touch screens linked and associated with the pump in paragraph 163 but does not teach that the display on the pump is a dual function touch

screen or that the second portion is displayed on the dual function touch screen display, however, Zerhusen (Figure 43 and columns 5, 14, 16, 34, and 35) was used to cover the touch screen, the simultaneous display of two portions, and the content of the second portion (the web browser page being met by Internet icon and customized home page or other Internet connection being made). As summarized here, all of Applicant's broadly claimed limitations are met.

That pages are displayed is a function of the system. The display of portions is interpreted as functional. The specific pages displayed, in this particular case, are not germane to the structure of the system and are therefore nonfunctional descriptive material. Though the nonfunctional descriptive material need only be given little weight (See: Ex parte Herman Mathias, Appeal No. 2005-1851, Application No. 09/612788; and Ex parte James Prescott Curry, Appeal No. 2005-0509, Application No. 09/449237), the Examiner was able to cite prior art that read upon the nonfunctional descriptive material in the rejections above. Little weight was placed on the pages being displayed (i.e., the pump information page and the web browser page) because the effect of displaying did not alter or change system. Any like system capable of displaying in the manner claimed by Applicant - no matter the information being displayed - meets Applicant's invention. Therefore, the pump information page and web browser page are nonfunctional descriptive material. It is dually noted here, however, that though the nonfiction descriptive material need be given little weight, the prior art meets the claimed nonfunctional descriptive material regardless. The terms "pump information page" and "web browser page" were interpreted broadly.

Additionally, though it is not relied upon for the purposes of rejection because the prior art of De La Huerga and Zerhusen, as combined in the above obviousness-type rejection, meet all of the claimed limitations, it is also noted that the arrangement of the data on the display is a matter of obviousness design choice in this particular instance. The arrangement of specific elements in the prior art need not be exactly the same as those presented in the claims. Section 2144.04 of the MPEP presents case law that sets legal precedent for supporting the rationale to reject based on design choice.

### ***Conclusion***

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT SOREY whose telephone number is (571) 270-3606. The examiner can normally be reached on Monday through Friday, 8:30AM to 5:00PM (EST).
24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Morgan can be reached on (571) 272-6773. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Art Unit: 3626

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/R. S./

Examiner, Art Unit 3626

/C. Luke Gilligan/

Primary Examiner, Art Unit 3626